THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NO.814 of 2004

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9th March 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 27.03.2003 in W.P.NO.19028 OF 1994 on the file of the High Court.)

Between:

The Commissioner of Collegiate Education, A.P., Nampally, Hyderabad.

...APPELLANT

AND

1. T.Muralidhar Rao, S/o.Venugopal Rao,44 years, Matrusri Oriental College, Jillellamudi, Near Bapatla, Guntur District.
2. The Secretary, Matrusri Oriental College, Jillellamudi, Guntur District.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE D.APPA RAO

WRIT APPEAL NO.814 OF 2004

JUDGMENT: (Per the Hon'ble Mr Justice B.Prakash Rao)

Heard the learned Government Pleader for Higher Education appearing on behalf of the appellant and Sri V.Parabrahma Sastry, the learned counsel appearing on behalf of the first respondent and Sri G.Ramachandra Reddy, the learned counsel appearing on behalf of the second respondent/management.

The appellant is the second respondent in the Writ Petition being W.P.No.19028 of 1994 filed by the first respondent herein, who is the employee of the management/second respondent herein seeking a writ of mandamus to assail the impugned proceedings dated 22.09.1994 and the earlier proceedings dated 11.08.1994 rejecting the approval of the appointment of the first respondent.

The facts, which are necessary for disposal of this appeal, are that, initially, the first respondent was appointed on 28.04.1994 and the appointment order itself shows that it is subject to the approval by the Competent Authority. In response to the approval sought for by the second respondent as per the letter dated 03.05.1994, the appellant, under the impugned order dated 11.08.1994 stated that the said request is rejected since the Correspondent has not obtained prior permission from the Commissioner of Collegiate Education and the list of candidates was not drawn from the Employment Exchange. Following this, the second respondent passed another impugned order dated 22.09.1994 discontinuing the services of the first respondent. The second respondent challenged these two proceedings, *inter alia*, on the ground that having regard to the circular of the Commissioner of Collegiate Education in Rc.No.7157/PC I-2/90 dated 08.12.1990, which allows the management to proceed with the selection process, they have rightly selected the first respondent. Therefore, there cannot be any rejection on the part of the appellant herein.

After hearing both the sides, the learned Single Judge allowed the Writ Petition holding that since the circular itself permits such selection, it is too late on the part of the appellant herein to reject the request for approval. Hence, the appeal.

The learned Government Pleader appearing for the appellant strenuously contended that the circular has not been properly considered and the object of it is only to obtain prior permission before making any appointment, though it may allow appointment but at the time of appointment, prior permission is necessary.

Both the counsel for respondent Nos.1 and 2 repel these submissions stating

that since the appointment was only after due selection and further, the total number of the employees in the Institution is less than fifteen (15), there is no requirement of any Employment Exchange Panel as such.

Considering the submissions made on either side across the bar and on perusal of the material available on record, we have given a consideration to the points which are involved and it is noticed that *prima facie* prior to the issuance of impugned order, no notice or any show cause was given to either of the respondents herein. No doubt the main point of rejection rests on the twin grounds namely no prior permission of the Commissioner of Collegiate Education is obtained and the list of candidates was not drawn from the Panel of Employment Exchange.

However, during the course of arguments, the submission goes to the extent of saying that the very process of selection is not as contemplated and the said circular is not valid. On the face of it, the impugned order is one without any notice or opportunity to either of the respondents herein. Both the respondents also came up with valid consideration in suspending the very appointment and discontinuance of the first respondent in the post and also to the extent of stating that having regard to the very circular and the scope therein, there is no necessity of obtaining prior permission as such or any list to be drawn from the Panel of Employment Exchange. These are all matters which have to be taken into consideration in a proper way in a form of explanation from either of the respondents after giving an opportunity to both the sides rather than raising several such submissions and decisions from both the sides for the first time in a Writ Petition under Article 226 of the Constitution of India. It is for the Competent Authority to take all these aspects and pass appropriate order

on merits in accordance with law.

In the circumstances, to avoid any further delay and as rightly submitted by the learned Government Pleader, the impugned order dated 11.08.1994 itself can be treated as show cause notice to which both the respondents can file their respective explanations within a period of four {4} weeks from today and on receipt thereof, the appellant shall consider the same and pass orders on merits in accordance with law within a period of two {2} months thereafter. Consequently, the later order dated 22.09.1994 stands set aside leaving it open for the appellant and the second respondent/management to pass fresh order in terms of the order of this Court.

Subject to the above, the Writ Appeal is disposed of. No costs.

It is needless to mention that failure to submit any explanation during the period as stated above, the impugned order dated 11.08.1994 holds good. It is further made clear that if no order is passed in spite of the explanations filed, it shall be deemed that the permission is already granted.

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(B.PRAKASH RAO, J)

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(D.APPA RAO, J)

9th March 2006

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